

### **REMARKS**

The Non Final Office Action dated March 06, 2008 addresses and rejects claims 1-19. Applicants respectfully request entry of this amendment and submit that the pending claims are in condition for allowance.

#### ***Amendments***

##### **In the Specification**

Applicants have amended the specification at [0017] to replace the term “insertion rod 20” in one instance with “insertion rod 40.” This amendment is made to correct a typographical error and does not add new matter. Support is found throughout the specification, including, for example, paragraphs [0015] and [0016].

##### **In the Claims**

Claim 1 is amended to clarify that the first component is for receiving and dispensing a tissue scaffold. Applicants have also amended independent claim 9 for purposes of clarification. Support for this Amendment is found throughout the specification. In addition, dependent claim 14 is amended to clarify “the proximal end” as “of the insertion tube.” Claim 15, which depends from claim 14, already includes this clarification. These amendments do not add new matter.

#### ***Claim Rejections***

##### **Rejection under 35 U.S.C. §112**

The Examiner rejects dependent claim 14 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. Applicants respectfully submit that the Examiner’s rejection is obviated by Applicants’ amendment of claim 14 herein to clarify that the term “proximal end” recited in claim 14 relates to the insertion tube, as the Examiner correctly assumes in the latest Office Action.

Accordingly, Applicants respectfully request that the Examiner withdraw this rejection with respect to dependent claim 14.

Rejections under 35 U.S.C. §102(b)

The Examiner rejects claims 1-3, 6, 8-11, 14 and 16 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,328,715 of Dragan et al. (“Dragan”). Applicants disagree and respectfully traverse the Examiner’s rejections.

Independent claim 1 recites a device for arthroscopically delivering a tissue scaffold to a damaged or injured tissue site comprising, among other elements, a first component for receiving and dispensing the tissue scaffold. The first component includes a hollow body which has a flared proximal end. Applicants respectfully submit that Dragan does not disclose these elements of claim 1.

First, Dragan does not teach or even suggest “a first component for receiving and dispensing a tissue scaffold” as recited in amended independent claim 1. Dragan teaches a device for dispensing low viscosity materials such as fluids, gels or pastes. A tissue scaffold is not a low viscosity material. A low viscosity material is a two or three dimensional porous structure that can be loaded with tissue fragments. See Specification at [0003]. As Applicants’ specification explains, the tissue scaffold does not flow but rather slides when pressure is applied to the tissue scaffold by the second component recited in amended claim 1. See specification, for example, at [0016]. Accordingly, Dragan’s device, which is designed to dispense low viscosity materials, would not be capable of dispensing a tissue scaffold.

Dragan also fails to disclose a device having an elongate hollow body and a *flared proximal end*. The device disclosed in Dragan is a syringe-type device having a flange (30) which is *adjacent* (at a 90°) to opening 32. Although the opening is beveled, Dragan does not in any way disclose a device having a flared proximal end which, as shown in the Figures of the pending application, must spread gradually outwardly (proximally) in the manner of a trumpet.

Accordingly, Applicants respectfully submit that claim 1 represents patentable subject matter and request that the Examiner withdraw this rejection with respect to independent claim 1 and allow it to proceed to issuance. In addition, Applicants respectfully submit that dependent claims 2-8 also are allowable since they depend from an allowable base claim.

The Examiner also rejects independent claim 9 as being anticipated by Dragan. Applicants respectfully traverse this rejection, as well as the rejection of dependent claims 10-11, 14 and 16.

Independent Claim 9 recites a device for arthroscopically delivering a tissue scaffold to a damaged or injured tissue site comprising, among other elements, an insertion rod, having a blunt tip at a distal end thereof, that is configured to be removably disposed within the insertion tube and for contacting the tissue scaffold disposed within the insertion tube.

First, as already discussed above with respect to independent claim 1, Dragan does not disclose or even suggest the use of tissue scaffolds in connection with its device. Dragn discloses an ampule 10, which is in the form of a flexible bladder that contains a low viscosity material to be dispensed. It is unlikely that a tissue scaffold could even be disposed within the ampule and even if it could somehow fit within the ampule, it could not be dispensed without causing the ampule to burst.

Even if a tissue scaffold could somehow be contained within the Dragan device without rupturing the ampule 10 when dispensed, Dragan fails to teach or even suggest an insertion rod that is configured to *contact* the tissue scaffold as recited independent claim 9. Dragan teaches a device in which a plunger contacts an ampule that houses a low viscosity fluid. Dragan's plunger-like tip portion never contacts the dispensing material because it contacts the ampule instead.

Accordingly, Applicants respectfully submit that independent claim 9 is allowable over Dragan and respectfully requests that the Examiner withdraw this rejection. Additionally, Applicants submit that dependent claims 10-19 are also allowable for at least the reason that they depend from an allowable base claim.

#### Rejections under 35 U.S.C. §103

The Examiner rejects dependent claims 4, 6, 15, 17, 18 and 19 under 35 U.S.C. §103 as obvious in view of Dragan, and rejects dependent claims 5, 12 and 13 as obvious in view of Dragan taken with U.S.2002/0002360 of Orr et al. ("Orr."). Applicants respectfully traverse these rejections.

In particular, as stated above, all of these dependent claims are allowable for at least the reason that they depend from an allowable base claim. Neither Dragan nor Orr, taken alone or in combination, teach or even suggest all the elements recited in independent claims 1 and 9.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejections under 35 U.S.C. §103 with respect to dependent claims 4, 6, 15, 17, 18 and 19 and allow these claims to proceed to issuance.

***Conclusion***

In view of the foregoing amendments and remarks, Applicants submit that all pending claims are in condition for allowance, and allowance is respectfully requested. The Examiner is requested to telephone the undersigned attorney for applicant if such communication is deemed to expedite prosecution of this application.

Dated: June 6, 2008

Respectfully submitted,  
By: /William C. Geary III/

William C. Geary  
Registration No.: 31,359  
Attorney for Applicant(s)  
NUTTER MCCLENNEN & FISH LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, Massachusetts 02210-2604  
(617) 439-2000  
(617) 310-9000 (Fax)